RECORDING REQUESTED

LONDON PACIFIC INVESTMENTS, INC.

AFTER RECORDATION, MAIL TO:

LONDON PACIFIC INVESTMENTS, ING. ANGLE: CUBAR REGISTRAR - RECORDER

1010 Crenshaw Bouleva Suite #100 Torrance, CA 90501

COVENANT AND AGREEMENT

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COPY of Document Recorded

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TO RESTRICT USE OF PROPERTY

(Portion of Gardena Valley 1 and 2 Landfill)

This	Covenai	nt and	ydre	ement	("Coven	ant")	1s	made	85	of	the
18	th	day	of _	April		1989	ру	Loi	ndon	Pac	ific
Invest	tments,	Inc.,	a Cal	ifornia	Corpo	ration	("L	PI")	who	is	the
owner	of re	cord o	f cer	tain pr	operty	situa	ted	in	the	City	of
Carsor	, Los	Angele	s Cou	nty, St	ate o	f Cali	forn	ia,	desci	ibed	in
Exhibi	lt A	attache	d her	eto ar	nd inc	orpora	ted	here	in	by	this
refere	nce ("	the Pr	operty"	') and	by th	e Cal	iforn	ia E	epari	tment	of
Health	serv	ices,	(the	"Depart	ment")	with	re	ferei	nca	to	the
following facts:											

- A. A portion of the Property was used between November 1956 and October 1959 for disposal of municipal and certain other solid waste and is listed on the Department's Expenditure Plan for the Hazardous Substances Cleanup Bond Act of 1984, revised January 1988.
- B. LPI and the Department have entered into a Consent Agreement that provides for investigation of conditions at the Property and for any remedial action that may be necessary.

C. LPI desires and intends that in order to protect the present or future public health and safety, the Property shall be used in such a manner as to avoid potential harm to persons or property which may result from hazardous wastes which have been deposited in unspecified portions of the Property.

ARTICLE I

GENERAL PROVISIONS

1.01. Provisions to Run With the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions, (collectively referred to as "Restrictions"), upon and subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. all of the Restrictions shall run with the land, and pass with each and every portion, the Property, and shall apply to and bind the respective successors in interest thereof. Each and all of the Restrictions are imposed upon the entire Property unless expressly stated as applicable to a specific portion of the Property. Each and all of the Restrictions are imposed pursuant to Sections 25355.5 and 25356.1 of the Health and Safety Code, and run with the land pursuant to Sections 25355.5 and 25356.1 and Section

1466 of the Civil Code. Each and all of the Restrictions are for the benefit of and enforceable by the Department.

- 1.02. Concurrence of Owners Presumed. All purchasers, lessees, or possessors of any portion of the Property shall be deemed by their purchase, leasing, or possession of such Property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agency, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of future Owners and Occupants and that their interest in the Property shall be subject to the Restrictions contained herein.
- 1.03. Incorporation Into peeds and Leases. Owner desires and Covenants that the Restrictions set out herein shall be incorporated by reference in each and all deeds and leases of any portion of the Property pursuant to Sections 1468, 1469, and 1470 of the California Civil Code.

ARTICLE II

DEFINITIONS

- 2.01. <u>Department</u>. "Department" shall mean the California State

 Department of Health Services and shall include its
 successor agencies, if any.
- 2.02. <u>Improvements</u>. "Improvements" shall mean all buildings, roads, driveways, regradings, and paved parking areas, constructed or placed upon any portion of the Property.
- 2.03. Occupants. "Occupants" shall mean Owners and those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to occupy any portion of the Property.
- 2.04. Owner. "Owner" shall mean the LPI or its successors in interest, including heirs, and assignees, who hold title to all or any portion of the Property.
- 2.05. <u>Excavation</u>. "Excavation" shall mean the excavation of earth from more than one foot below the ground surface (e.g., from drilling of wells or placement of utility poles), or the excavation of more than 10 cubic yards of earth from one foot or less below the ground surface.

2.06. Earth Movement. "Earth Movement" shall mean the movement of earth extracted from more than one foot below the ground surface from any one location on the Property to any other location.

ARTICLE III

DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY

- 3.01. Restrictions on Use. Owner promises to restrict the use of Property as follows:
 - (a) Owner promises that no use of the Property shall be allowed to disturb the integrity of any containment system or the function of any monitoring system established by the Department (including any ground water monitoring, air monitoring, or subsurface vapor monitoring system, gas collection or control system, or surface water runoff control system) unless the Owner can demonstrate to the Department that the disturbance:
 - (1) Is necessary to the proposed use of the Property and will not increase the potential hazard to human health or the environment; or

- (2) Is necessary to reduce a threat to human health or the environment.
- (b) Owner shall not initiate any excavation or earth movement or any construction of buildings or paved areas on the Property without express written concurrence by the Department that such construction is consistent with the standards set forth at paragraph 3.01(a), above.
- (c) Subdivision, as that term is used in Division 2, commencing with Section 66410 of Title 7 of the Government Code, of any land described in Exhibit A shall be prohibited without the express written approval of the Department.
- (d) The Property, or any portion thereof, shall not be used for residential purposes, hospitals for humans, schools for persons under 21 years of age, day-care centers for children, or any permanently occupied human habitation (including hotels or motels which are used as a permanent residence).
- 3.02. Conveyance of Property. The Owner shall not grant, sell, lease, transfer, or otherwise convey any land or interest in land described in Exhibit A without providing a thirty

- (30) day advance notice to the Department and notice to the buyer as required in Health and Safety Code, Section 25359.7.
- (a) The grant, sale, lease, transfer, or conveyance shall not relieve the Owner of its obligations under this Covenant unless:
 - (1) The Department in writing approves transfer of such obligations to the buyer, lessee, or other party; and
 - (2) The buyer, lessee, or other party accepts such obligations in a binding written agreement.
- (b) The Department shall not, by reason of the Covenant, have authority to approve, disapprove, or otherwise affect any sale, lease, or other conveyance of the Property except as otherwise provided by law, order, and agreement by reason of this Covenant.
- 3.03. Enforcement. Failure of the Owner to comply with any of the requirements or restrictions, as set forth in paragraph 3.01, shall be grounds for the Department, by reason of this Covenant, to have the authority to require that the Owner modify or remove any improvements constructed in violation of that paragraph. Violation of

any provision of this Covenant shall be grounds for the Department to enforce civil and criminal actions against the Owner as provided by law.

3.04. Notice in Agreements. All Owners and Occupants shall execute a written instrument which shall accompany all purchase, lease, sublease, or rental agreements relating to the Property. The instrument shall contain the following statement:

"The land described herein includes a portion of a former landfill that was permitted to receive municipal and certain other solid wastes and contains hazardous constitutents. Such condition renders the land and the owner, lessee, or other possessor of the land subject to certain requirements, restrictions, provisions, and liabilities contained in Chapter 6.5 and Chapter 6.8 of Division 20 of the Health and Safety Code regarding use and development of the Additional information can be obtained by land. reviewing the files of the Department of Health Services and the Los Angeles Regional Water Quality Control Board or their successor agencies. This statement is not a declaration that a hazard exists."

ARTICLE IV

MODIFICATION AND TERMINATION

- 4.01. Modification. Any Owner or, with the Owner's consent, any Occupant of the Property or any portion thereof may apply to the Department for a written modification of the provisions of this Covenant. Such application shall contain 1) a statement of who is applying for the modification; 2) the proposed modification; and 3) a statement of reasons in support of the granting of the modification. In addition, the owner shall demonstrate to the satisfaction of the Department that the proposed modification will not cause or allow any of the following effects:
 - A. The creation or increase of significant present or future hazards to the public.
 - B. Any significant diminution of the ability to mitigate any significant potential or actual hazard to public health.
 - c. Any long-term increase in the number of humans or animals exposed to significant hazards which affect the health, well-being, or safety of the public.

Upon making a decision to approve or deny the proposed variance, the director or his/her designee shall issue and cause to be served the decision and findings of fact on the owner of the land, the legislative body of the city or county in whose jurisdiction the Land is located, and upon any other interested persons. If the Department agrees to proposed modification, the director or his/her designee and all of the owners of the land shall execute instrument an reflecting this agreement, shall particularly describe the real property affected by the instrument, and if applicable, the location proposed modification, and the owner shall record the instrument in the county in which the land is located within ten (10) days of the date of execution.

Modification to Protect Health and the Environment. 4.02. Until the Department certifies that the Property has been remediated to. the Department's satisfaction. the Department may require modification any the restrictions on use imposed by section 3.01 of this Covenant, if necessary to protect public health and the environment, in light of new information provided by the Remedial Investigation Report, Feasibility Study Report, Remedial Action Plan, monitoring reports, or other reports required pursuant to any agreement between the Owner and the Department.

- 4.03. Termination. Any Owner or, with the Owner's consent, an Occupant of the Property or a portion thereof may apply to the Department for a termination of the Restrictions as they apply to all or any portion of the Property on the ground that the waste no longer creates a significant existing or potential hazard to present or future public health or safety. Any application shall contain sufficient evidence for the Department to make a finding upon any or all of the following grounds:
 - A. The hazardous constituents that caused the land to be contaminated have since been removed or altered in a manner that precludes any significant existing or potential hazard to present or future public health.
 - B. New scientific evidence is available concerning either of the following:
 - 1. The nature of the above-referenced contamination; or
 - 2. The geology or other physical environmental characteristics of the contaminated land.

Upon making a decision to approve or deny the proposed termination, the director or his/her designee shall issue

and cause to be served the decision and findings of fact on the owners of the land, the legislative body, and the city or county in whose jurisdiction the land is located, and upon any other interested person. If the Department approves, in writing, the proposed termination of the Restrictions, the director or his/her designee and all of the owners of the land shall record or cause to be recorded, a termination of the Restrictions which shall particularly describe the real property subject to the Restrictions and which shall be indexed by the recorder in the grantor index in the name of the record title owner of the real property subject to the Restrictions, and in the grantee index in the name of the Department.

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4.04. Term. Unless terminated in accordance with paragraph 4.03 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

ARTICLE V

MISCELLANEOUS

5.01. No <u>Dedication Intended</u>. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property or any portion thereof to the general public or for any purposes whatsoever.

5.02. Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective 1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served or official of a government agency being served, or 2) three (3) business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested:

To: London Pacific Investments, Inc.

1010 Crenshaw Boulevard, Suite 100

Torrance, California 90510

Copy to: Department of Health Services

Toxic Substances Control Division

Program Planning and Evaluation Section

Technical Services Unit

Allen K. Wolfenden, Chief

714/744 P Street

Post Office Box 942732

Sacramento, CA 94234-7320

5.03. <u>Partial Invalidity</u>. If any portion of the Restrictions set forth herein or terms is determined to be invalid for

any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

- 5.04. Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.
- 5.05. Recordation. This instrument shall be executed by the LPI and by the Director, California Department of Health Services. This instrument shall be recorded by the LPI in the County of Los Angeles within ten (10) days of the date of execution.
 - 5.06. <u>References</u>. All references to Code sections include successor provisions.
 - 5.07. Effective Date. The restrictions on use imposed by section 3.01 of this Covenant shall become effective upon certification by the Department that the Property has been remediated to the Department's satisfaction.

IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

London Pacific Investments,
Inc.

By: bl

Title: President

Date: 4-13-89

DEPARTMENT OF HEALTH SERVICES

Bv:

Title: ONUF PP&E

Date: 4/18/89

STATE OF CALIFORNIA)

COUNTY OF Los Pageles)

WITNESS my hand and official seal.



Notary Public in and for said

האבאף להב עלמוות

county of Sacramato

WITNESS my hand and official seal.

Stephe M Sifa

OVNICIAL SEAL
STEPHEN M. DI ZIO
NOTARY PUBLIG - CALIFORNIA
SACRAMENTO COUNTY
My Lamin Expires March 15, 1991

Notary Public in and for said County and State

EXHIBIT E

Paragraph 9.1 of the Consent Agreement between the State of California, Department of Health Services ("Department") and London Pacific Investments, Inc., ("Owner") requires Owner to provide certain assurances to the Department prior to beginning implementation of the RI/FS workplan, as further described in this Appendix to that Consent Agreement.

Owner shall obtain a performance bond, letter of credit, or other financial instrument in favor of the Department prior to beginning implementation of any Operable Unit, as defined herein. Until completion of the Operable Unit, the funds governed by said financial instrument shall be accessed only by the Department, or upon express written approval of the Department. Providing financial assurance for the completion of each Operable Unit ensures that the relevant independent contractor will complete that Operable Unit, paid if necessary from the funds guaranteed by the financial assurance mechanism, even if the Owner becomes unable or unwilling to pay for the completion of that work. The concept of an Operable Unit is based in part on the Department's desire to ensure that any work begun by the Owner or its agents or independent contractors will not be left uncompleted at a point that would materially increase (1) risks to public health or the environment, or (2) the total cost of completing the work.

Before beginning Operable Unit I, II, III, or IV, as defined in the attached chart, the Owner must provide a financial assurance instrument satisfactory to the Department in an amount equal to the estimated cost of completing that Operable Unit.

Estimates of the costs of remedial action elements may change substantially after the RI/FS is completed and the Remedial Design is prepared. Financial assurance amounts for Operable Units following Remedial Design preparation shall be recalculated based on the approved Remedial Design, consistent with the principles outlined above.

In addition, the Department reserves the right to reconsider, based on the Remedial Action Plan and the Remedial Design, whether task 7 (remove drums) should be made part of Operable Unit III, for financial assurance purposes. The Department may require such a change if reasonably necessary to protect human health and the environment, considering (among other factors) the expected relative stability and security of the Property after completion of task 7 and before initiation of tasks 8 or 9.

The Department and Owner recognize that a Remedial Design may be selected that satisfies final cover requirements in part through construction that is an integral part of the commercial development of the site (e.g., the building footprint and asphalt parking area may supplement a synthetic membrane, in providing a

sufficiently impermeable cover). The Department and Owner agree that, if such a design is selected, Owner may guarantee completion of such commercial development aspects of the remedial design through binding agreement to perform within a reasonable specified time, as an alternative to providing financial assurance for the estimated cost of such portions of the commercial development.